

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY BARTKO,

Case No. 22-12985

Plaintiff,

v.

F. Kay Behm

United States District Judge

MICHAEL GOETZ, *et al.*,

Defendants.

_____ /

**ORDER GRANTING *EX PARTE* MOTION FOR EXTENSION
OF TIME TO FILE NOTICE OF APPEAL (ECF No. 50)**

On November 30, 2023, this court entered an Opinion and Order granting Defendants' motion to dismiss the complaint, denying Plaintiff's motion for leave to amend the complaint, and entered judgment in favor of Defendants. (ECF Nos. 48, 49). On December 21, 2023, before the time expired for Plaintiff to file a notice of appeal, he moved for an extension of time to file his notice of appeal. (ECF No. 50).

Pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, a timely notice of appeal must be filed within 30 days after the judgment or order being appealed is entered. Fed. R. App. P. 4(a)(1)(A). Rule 4(a)(5) applies to a motion for extension of time and provides:

(A) The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be *ex parte* unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with the local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

Fed. R. App. P. 4(a)(5). “Good cause [is] found where forces beyond the control of the appellant prevented her from filing a timely notice of appeal.” *Nicholson v.*

City of Warren, 467 F.3d 525, 526 (6th Cir. 2006) (citations omitted). The deadline for Plaintiff to file a notice of appeal was December 30, 2023. He filed his motion before the expiration of the deadline, and thus, it was appropriately filed *ex parte*.

Fed. R. App. P. 4(a)(5)(B). Plaintiff is entitled to relief if he establishes excusable neglect or good cause for failing to file a timely notice of appeal. *Id.* at

4(a)(5)(A)(ii). Plaintiff explains that the appeal period ran primarily during the holidays, making it difficult for him to complete the necessary research and writing to evaluate the issues for appeal within the deadline. Plaintiff asserts that he requires additional time to evaluate the scope of the issues he intends to raise on appeal. The court finds that Plaintiff has established good cause for an extension of time to file his notice of appeal. An extension under Rule 4(a)(5) may not exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later. Fed. R. App. P.

4(a)(5)(C). Accordingly, Plaintiff must file his notice of appeal by **February 2, 2024**.

SO ORDERED.

Date: January 19, 2024

s/F. Kay Behm

F. Kay Behm

United States District Judge